

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>ePLUS, INC.,</b>	)	
	)	
	)	<b>Civil Action No. 3:09-CV-620 (REP)</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>LAWSON SOFTWARE, INC.,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**PLAINTIFF *ePLUS* INC.’S THIRD REVISED PROPOSED VERDICT FORM**

Plaintiff *ePlus*, Inc., (“*ePlus*”) hereby respectfully submits the attached third revised proposed verdict form in order to reflect the Court’s rulings from the bench on Friday, January 21, 2011. While *ePlus* believes that Defendant has not met its evidentiary burdens with respect to any of the alleged prior art that forms the basis for the invalidity questions included in this form, *ePlus* recognizes that the Court has permitted Defendant to proceed on the basis of the alleged prior art identified in this form. *ePlus* has attempted to reach agreement with Defendant with respect to this form, but the parties have not reached an agreement as of the time of this filing.

As discussed in Court on January 21, this form would have the jury identify, on a claim-by-claim basis, the prior art upon which it would invalidate a claim pursuant to either anticipation or obviousness defenses, including the particular combination of references used in connection with an obviousness finding. Because the alleged prior art references upon which Defendant has based its invalidity theories are vigorously disputed on various factual and legal grounds, it is particularly important that the jury identify the specific combination of alleged prior art references upon which it would find a claim to be obvious. *ePlus*’s proposed form

would require the jurors to identify the specific combination of references relied upon. *See* Section II, *infra*.

If the Court permits the jurors to render a verdict of invalidity without specifying which alleged prior art is the basis for its verdict, the verdict would be subject to reversal if **any one** of the bases that the jury is permitted to consider is held impermissible on appeal. *See Mitsubishi Elec. Corp. v. Ampex Corp.*, 190 F.3d 1300, 1303 (Fed. Cir. 1999) (stating “[t]he Supreme Court has ruled that when liability is argued to the jury on alternate legal theories, one of which is not legally correct or is not a permissible jury question, a general verdict of liability can not stand lest it have been based on the incorrect or impermissible theory” but holding that party had waived objection to form) (citing *Maryland v. Baldwin*, 112 U.S. 490 (1884)). “This principle has been applied to multiple claims as well as to multiple theories, when one of the claims or theories should not have been submitted to the jury.” *Mitsubishi Elec.*, 190 F.3d at 1303.

*ePlus* also objects to the characterization in Section II(B) of Lawson’s most recent proposed verdict form of U.S. Patent No. 5,712,989 as the “Fisher RIMS” patent. The verdict form should simply recite the patent number.

Accordingly, *ePlus* respectfully requests that the Court adopt the accompanying proposed jury form.

**VERDICT**

We, the jury, find as follows:

**I. INFRINGEMENT**

Do you find that *ePlus* has proven that it is more likely than not that the following accused configurations of the Lawson S3 Procurement System have infringed the listed claims of the *ePlus* patents, either directly or indirectly? **(As to each claim, a “YES” answer is a finding for *ePlus*. A “NO” answer is a finding for Lawson.)**

Configuration No. 1: Core S3 Procurement System (Lawson System Foundation (“LSF”)/Process Flow, in combination with Inventory Control, Requisition, and Purchase Order Modules)

’516 Patent, claim 1:    YES \_\_\_\_\_    NO \_\_\_\_\_

’516 Patent, claim 6:    YES \_\_\_\_\_    NO \_\_\_\_\_

Configuration No. 2: Core S3 Procurement System (Lawson System Foundation (“LSF”)/Process Flow, in combination with Inventory Control, Requisition, and Purchase Order Modules) and Requisition Self-Service or “RSS”

’683 Patent, claim 3:    YES \_\_\_\_\_    NO \_\_\_\_\_

’683 Patent, claim 28:    YES \_\_\_\_\_    NO \_\_\_\_\_

’516 Patent, claim 1:    YES \_\_\_\_\_    NO \_\_\_\_\_

’516 Patent, claim 6:    YES \_\_\_\_\_    NO \_\_\_\_\_

’516 Patent, claim 9:    YES \_\_\_\_\_    NO \_\_\_\_\_

’516 Patent, claim 21:    YES \_\_\_\_\_    NO \_\_\_\_\_

’516 Patent, claim 22:    YES \_\_\_\_\_    NO \_\_\_\_\_

'516 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'172 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

Configuration No. 3: Core S3 Procurement System (Lawson System Foundation

("LSF")/Process Flow, in combination with Inventory Control, Requisition, and Purchase Order  
Modules), Requisition Self-Service or "RSS," and Punchout

'683 Patent, claim 3: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 26: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 28: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 2: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 6: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 9: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 21: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 22: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'172 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

Configuration No. 4: Core S3 Procurement System (Lawson System Foundation

("LSF")/Process Flow, in combination with Inventory Control, Requisition, and Purchase Order

Modules) and Electronic Data Interchange or "EDI"

'683 Patent, claim 26: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 6: YES \_\_\_\_\_ NO \_\_\_\_\_

Configuration No. 5: Core S3 Procurement System (Lawson System Foundation

("LSF")/Process Flow, in combination with Inventory Control, Requisition, and Purchase Order

Modules), Requisition Self-Service or "RSS", Punchout, and Electronic Data Interchange or

"EDI"

'683 Patent, claim 3: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 26: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 28: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 2: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 6: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 9: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 21: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 22: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'172 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

**II. VALIDITY**

**(As to each claim, a “YES” answer is a finding for Lawson. A “NO” answer is a finding for ePlus.)**

A) Do you find that Lawson has proven by clear and convincing evidence that any of the following claims are anticipated by the Fisher RIMS system?

'683 Patent, claim 3: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 26: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 28: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 2: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 6: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 9: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 21: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 22: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'172 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

B) Do you find that Lawson has proven by clear and convincing evidence that any of the following claims are anticipated by U.S. Patent No. 5,712,989?

'683 Patent, claim 3: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 26: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 28: YES \_\_\_\_\_ NO \_\_\_\_\_

'683 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 2: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 6: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 9: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 21: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 22: YES \_\_\_\_\_ NO \_\_\_\_\_

'516 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

'172 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

C) Do you find that Lawson has proven by clear and convincing evidence that any of the following claims are obvious in light of the combination of (1) either the RIMS System, the RIMS brochure, and/or U.S. Patent No. 5,712,989 and (2) either the TV/2 System, the TV/2 brochure, and/or the TV/2 general information manual?

1) '683 Patent, claim 3: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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2) '683 Patent, claim 26: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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3) '683 Patent, claim 28: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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4) '683 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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5) '516 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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6) '516 Patent, claim 2: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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7) '516 Patent, claim 6: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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8) '516 Patent, claim 9: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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9) '516 Patent, claim 21: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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10) '516 Patent, claim 22: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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11) '516 Patent, claim 29: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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12) '172 Patent, claim 1: YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered YES, list the combination of the alleged prior art references that you have found render the claim obvious. If you answered NO, you do not need to list any references:

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**INSTRUCTION: CONTINUE AND SIGN VERDICT FORM ON NEXT PAGE**

You each must sign this Verdict Form.

Dated: \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON

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Respectfully submitted,

Dated: January 23, 2011

/s/

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**CERTIFICATE OF SERVICE**

I certify that on this 23rd day of January, 2011, I will electronically file the foregoing **PLAINTIFF ePLUS INC.'S THIRD REVISED PROPOSED VERDICT FORM** with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

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